UNIVERSITY of WASHINGTON

HB 2601 Project

Progress Report

Technology Law & Public Policy Clinic

University of Washington School of Law School

Introduction

Our Charge

- House Bill 2601* calls for a review of Washington State's telecommunications policies; areas to be examined include:
  - Tax treatment of telecommunications service providers;
  - The existing amount of competition in the market place;
  - What barriers to competition exist and how they can be removed;
  - Appropriate regulatory role for the Utilities and Transportation Commission and other government bodies; and
  - Other suggestions for policies which will benefit Washington citizens and businesses.
- The Tech-Law Clinic consists of a varying number of students 5-10 depending on the academic quarter ; we meet 1-3 times per week

Introduction

Our Efforts to Date

- Since September Tech-Law Clinic students have:
  - Spoken with stakeholders and interested parties;
  - Crafted “test” policies in the areas of interconnection and universal service;
  - Shared thoughts with and received feedback from an advisory board representing providers, consumers and government officials;
  - Crafted an overarching approach to telecommunications policy i.e. a “lens” through which telecommunications policy should be examined and formulated; and
  - Presented an interim report to the Technology, Energy and Communications Committee of the Washington State Legislature

Introduction

Our Efforts to Date

- Issues we will share today:
  - Consumer protection, Competition, Increasing access, Role of PUDs/Municipal authority to provide broadband service and Taxes
- Issues we have explored and can discuss time permitting:
  - Cable franchising, Right of way access, Pole attachments, Interconnection and intercarrier compensation

UNIVERSITY of WASHINGTON

Communications Services Consumer Protection

Consumer Protection

Background

- State Consumer Protection Act (RCW 19.86) does not require disclosure of
  - restrictive terms (e.g. ETF's)
  - actions expected to result in substantial cost overages
  - actual service levels in absence of "unfair deceptive act or practice"
- Industry policy regarding these disclosures is not standardized or is voluntary
- FCC requires "truth in billing" (47 CFR §64.2401)
  - But, does not require prior notice of expected overages or reporting of actual service levels delivered to a consumer
- Currently, complaints are fragmented between UTC and AG's office – resulting in consumer uncertainty

Consumer Protection

Potential Problems

- Restrictive terms can “lock in” unsuspecting consumers in the absence of plain language disclosure
  - 18% of mobile customers and 38% of broadband users were unaware whether they are subject to ETF
- Lack of prior notification of overages above expected costs contributes to “bill shock”
  - 1 in 6 mobile users have experienced “bill shock”
- Lack of reporting of actual service levels reduces customer’s ability to hold provider accountable
  - 4 of 5 broadband customers do not know their actual connection speeds

Consumer Protection

Possible Solution

- Enact state Communications Services Consumer Protection legislation to require:
  - Plain language prior disclosure of restrictive terms at the point of sale (e.g. ETF's; Cancellation Fee)
  - Notification when consumer takes actions likely to substantially increase actual service costs (e.g. prior notification of beyond plan charges)
  - Regular reporting of actual service levels to consumers (e.g. monthly average broadband connection speeds; dropped calls per month)
  - Centralization of communications services related consumer complaints under Attorney General

Competition

Identifying methods of increasing availability and lowering prices

Competition

Definition & Intro

- **Competition:**

The types and numbers of telecommunication access an ordinary customer has.

Influence on (1) Price (2) Service Quality

Possible Access to Internet:	**Speed**
(1) Wireline (Qwest DSL)	1000X
(2) Cable (Comcast or "_____")	1000X
(3) Fixed Wireless (Out-door robust "WIFI")	100X
(4) Dial-up	1X
(5) Mobile Wireless (On cellphone)	
(6) Satellite	

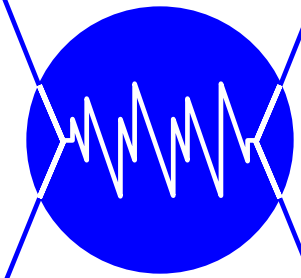
Competition

Problems

Rural Area

Not enough access
--shortage of access types

High build-out investment &
Low population density



Urban Area

Insufficiently robust competition
--shortage of providers

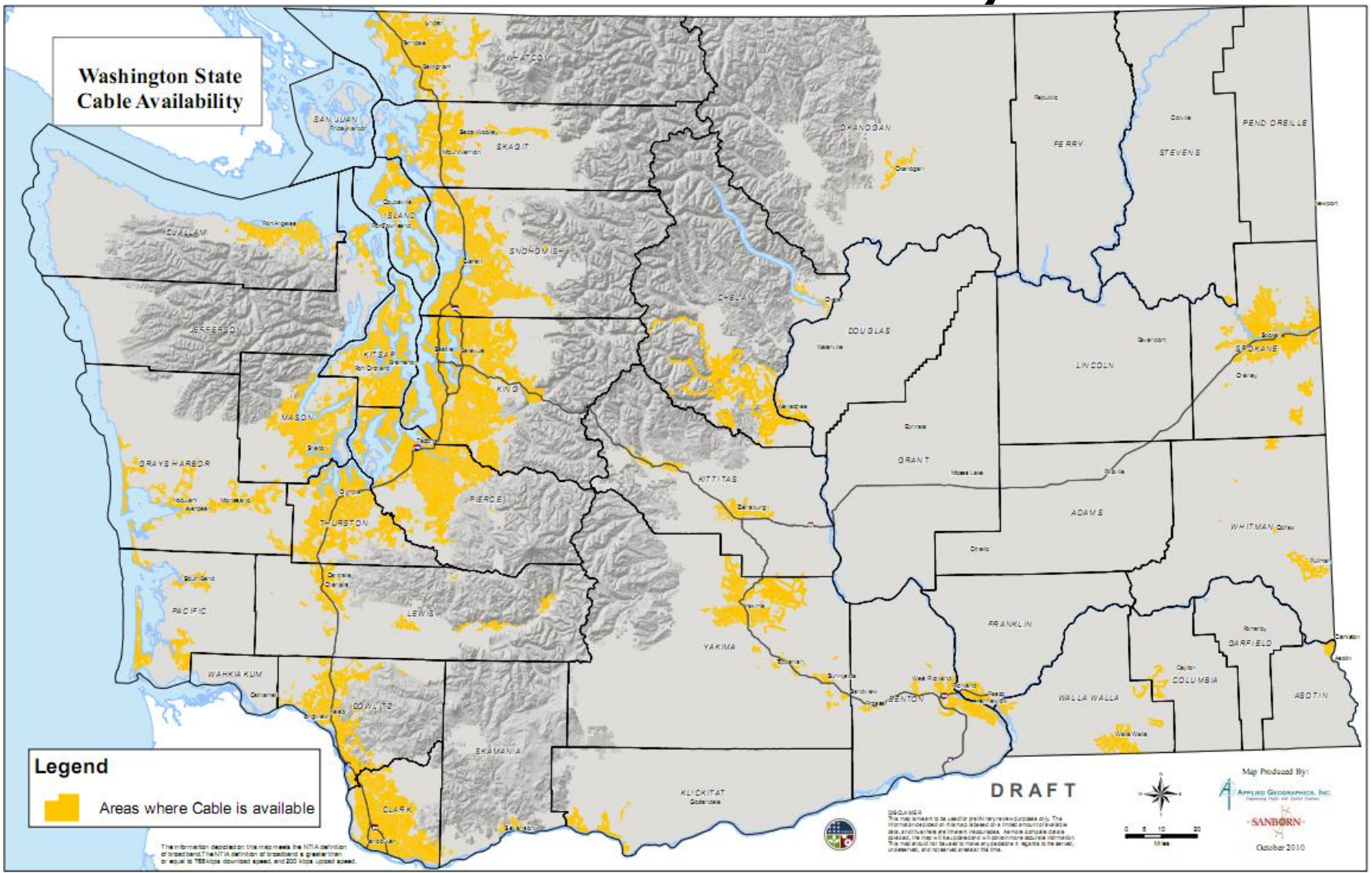
High build-out investment
Incumbents refuse to open network

Oligopoly

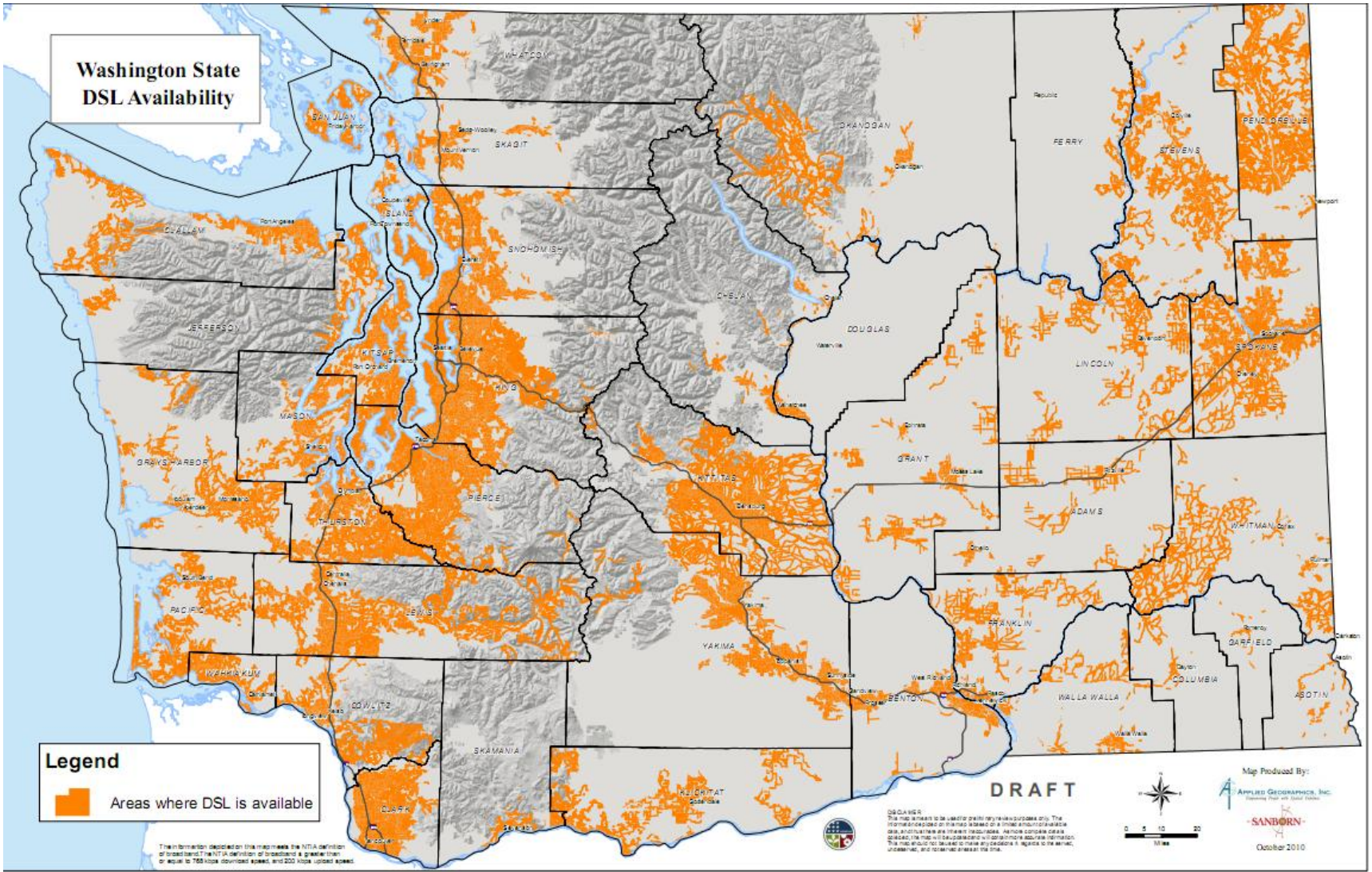
Oligarch dominating the market

(1) Wireline (Qwest)
(2) Cable (Comcast or smaller company)
~~(3) Fixed Wireless~~
~~(4) Dial-up~~
~~(5) Mobile Wireless~~
~~(6) Satellite~~

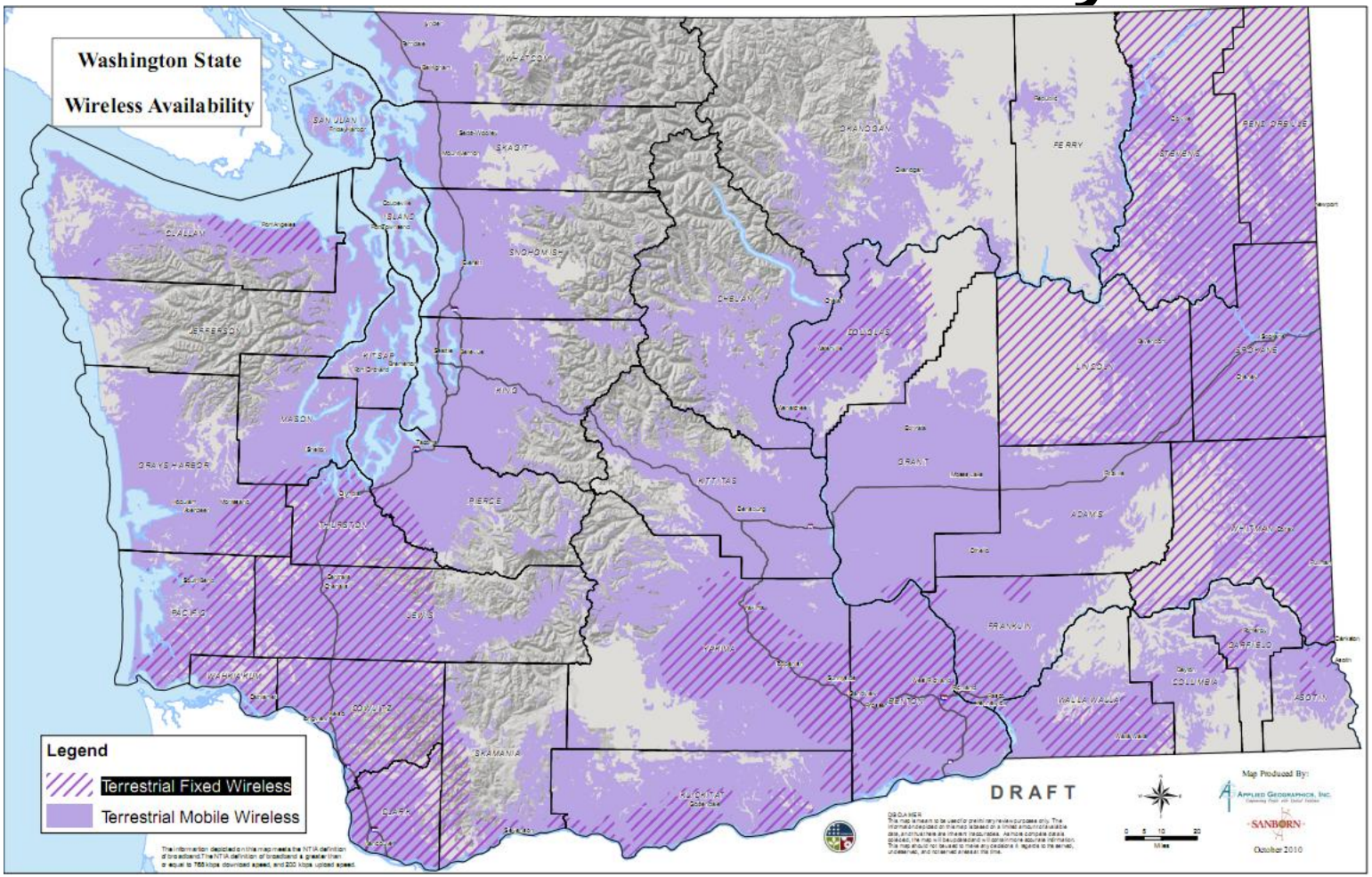
Cable Availability



DSL Availability



Wireless Availability



"Spokane Model": AIR-PIPE Rural Broadband Internet

Competition

Potential Solutions

Rural Area

1. Fixed Wireless (Spokane Model)

   ”AIR-PIPE Rural Broadband Internet”

2. Reasonable statutory requirement/ incentive to develop DSL broadband based on landline phone network?

Urban Area

1. Statutory incentive for Competitive Local Exchange Carriers (CLEC) ?

   Proper regulation to prevent “bubble” (e.g. administrative agency approval)

UNIVERSITY of WASHINGTON

Increasing Access to Communications Services in Washington State

Access

Introduction

- **Background**: Broadband has become central to the needs of our families, health of our economy, and the vitality of our communities

- **Problem**: Four barriers to universal broadband service: (1) Availability; (2) Cost; (3) Digital Literacy; (4) Accessibility

- **Possible Solution**: Create a state ‘universal service fund’ program to address barriers to universal broadband service

Access

Potential Problem: Availability

- Approximately 35% of residents in Columbia, Ferry, Grays Harbor, Lewis, and Stevens counties do not have a single broadband option.*
- Approximately 250k Washington residents have no broadband access.
- 9% of Washington small businesses have no broadband access.

*Defined as data transmission speeds of 200 Kbps in at least one direction.

Access

Possible Solution

- Create a State Universal Service Program
  - Grants for build-out in unserved and underserved areas; subsidies for assistive technologies equipment; and funding for digital literacy skills training programs
  - Revenue Source: Networked box fee (one-time fee levied on products able to connect to communications networks)
    - Network deployment funded by network users

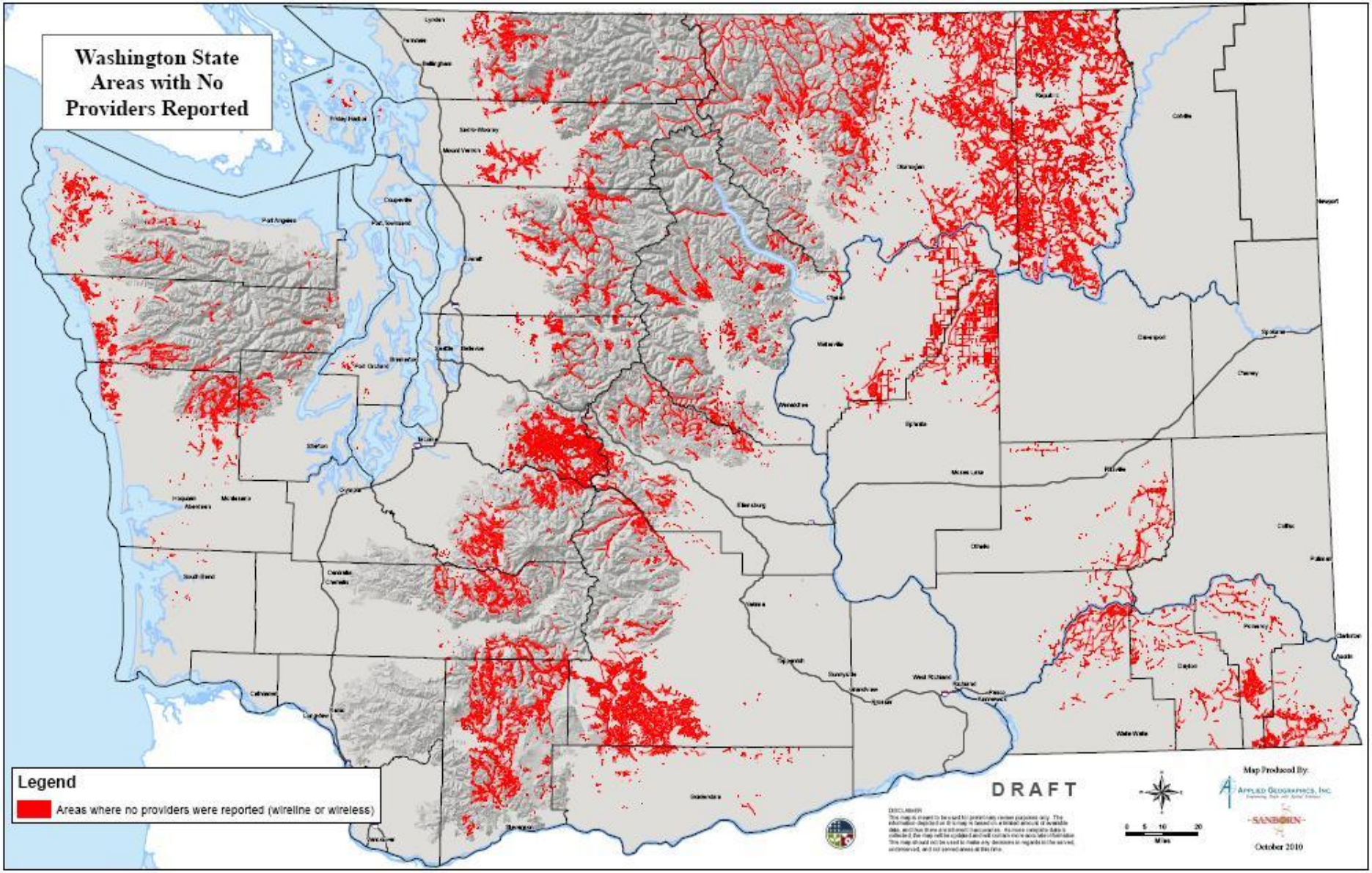
UNIVERSITY of WASHINGTON

Public Utility Districts & Municipal Networks

PUDs and Municipalities

Introduction

- **Background**:
  - Public utility districts have no retail authority
  - Municipalities have no statutory authority to create or run their own networks
- **Problem**:
  - Many Washington residents have no broadband access
- **Possible Solution**:
  - Empower localities to take a more active role in securing broadband access for their residents


Washington State
Areas with No
Providers Reported
Legend
Areas where no providers were reported (wireline or wireless)
DRAFT
Map Produced By:
Applied Geographics, Inc.
October 2010

PUDs and Municipalities

- **PROBLEM**: If there is no business case for private investment in infrastructure in these areas, how do we kick-start the market?

- **SOLUTION**: Empower localities with the option to invest in broadband infrastructure, participate in the market, and spur innovation.

UNIVERSITY of WASHINGTON

Taxation of Telecommunications Services Providing the Same or Functionally Equivalent Services

Taxation

Background

- History is to blame for the current tax regime
- Who is impacted?
  - All competitors who offer digital data (including voice, video, etc.)
- What taxes and fees are in place?
  - Sales, B&O, property, utility, franchise, TAP, TRS, 911, and others
- By whom?
  - Federal, state, city, and county governments

Bottom Line: Similarly situated competitors are taxed differently as a result of legacy regulatory regime

Taxation

Potential Problems

- Incumbent competitors: Similar services face dissimilar taxes
  - E.g., property-based valuation methodologies for cable providers and wireline/wireless telephone companies
    - Market distortion
    - Government picks winners and losers
- New entrants/technologies: face higher hurdles and thus discourages/hinders innovation
  - New businesses face a proportionally higher tax burden in Washington State
  - B&O tax punishes revenue-generating but loss-making new entrants

Taxation

Possible Solutions

- Centralization of cable provider property tax assessments
- Relief from B&O tax (e.g., exemptions, credits, deferrals) for broadband services
  - Either generally, limited to new competitors, or for new entrants in [un-/under-]served areas
- Revenue neutrality: Long term economic benefits justify any short term impacts